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7	IN THE UNITED STATES DISTRICT COURT	
8	FOR THE DISTRICT OF ARIZONA	
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11	Matthew Bennett,	Case No.:
12	Plaintiff,	COMPLAINT
13	vs.	
14		
15	United States Department of Veteran's	
	Affairs; Denis McDonough, in his official capacity as United States Secretary of	
16	Veterans Affairs,	
17		
18	Defendants.	
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21	NATURE OF THE ACTION	
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23	This is an action under Title VII of the Civil Rights Act of 1964, as amended ("Title	
24	VII"), against Defendants, the United States Department of Veteran's Affairs (hereinafter	
25	"VA" or "the Agency"), and Denis McDonough, in his official capacity as United States	
26	Secretary of Veterans Affairs, due to unlawful employment practices on the basis of race	
27	(African American), to provide appropriate rel	ief for Plaintiff who was adversely affected
28		

by such practices. As alleged with greater particularity in this Complaint, Plaintiff alleges that the Defendants subjected Plaintiff to unlawful discrimination based on his race when he was not selected for the Criminal Investigator position due to his race.

#### **JURISDICTION AND VENUE**

- 1. Jurisdiction of this Court is invoked pursuant to 28 U.S. Code § 1331, 1337, 1343(a)(4), and 1391(e)(1).
- 2. This action is authorized and instituted pursuant to sections 42 U.S.C. § 2000e-2(a)(1) and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.
- 3. The employment practices alleged to be unlawful were committed within the jurisdiction of the United Stated District Court for the District of Arizona.

#### **PARTIES**

- 4. Plaintiff, Matthew Bennett (hereinafter "Mr. Bennett" or "Plaintiff"), was at all relevant times an employee of the Agency in Maricopa County, Arizona.
- 5. At all relevant times, the Agency has been a Government entity operating in the State of Arizona.
- 6. At all relevant times, Defendant has continuously employed fifteen (15) or more persons.

## ADMINISTRATIVE PROCEDURES

- 7. On October 28, 2022, Plaintiff initiated Formal Complaint with the Agency's Office of Resolution Management, Diversity & Inclusion (ORMDI), alleging that he was subjected to employment discrimination based on his race when he was not selected for the Criminal Investigator position he applied to, and was further subjected to a hostile work environment.
- 8. Mr. Bennett's formal complaint was assigned VA Case No. 200P-644-2022-147530.

- 9. On March 15, 2023, Plaintiff received the Agency's Final Agency Decision substantiating that Mr. Bennett was subjected to an unlawful hostile work environment based on his race, but failed to substantiate his discriminatory non-selection claim, entitling him to pursue this claim in Federal District Court by January 11, 2024.
  - 10. All conditions precedent to the institution of this lawsuit have been fulfilled.

### FACTUAL ALLEGATIONS

- 11. While successfully fulfilling his responsibilities to the Agency, Mr. Bennett applied for the Criminal Investigator position within the Agency and was interviewed on July 27, 2023.
- 12. The interview panel consisted of Mr. Joshua Fister, Mr. Frederick Dewerth, and Mr. Joseph Owens, while the selecting official was Mr. Taylor Whitt.
- 13. At the time of events giving rise to Mr. Bennett's claims, Ms. Fister was Mr. Bennett's second-level supervisor and held the position of Supervisory Police Officer.
- 14. Beginning in July 2020, Mr. Fister subjected Mr. Bennett to an unlawful hostile work environment based on his race, as substantiated by the Agency's own Final Agency Decision in VA Case No. 200P-644-2022-147530.
- 15. The hostile work environment Mr. Fister subjected Mr. Bennett to, which was substantiated by documentary evidence and witness testimony, included Racially offensive commentary and a detrimental difference in treatment as compared to his similarly situated colleagues outside of his protected class, leading the Agency to recognize their liability for the unlawful hostile work environment.
- 16. The Agency failed to recognize that Mr. Fister's presence on the interview panel was a detriment to Mr. Bennett based on Mr. Fister's discriminatory animus toward Mr. Bennett based on his race.

- 17. Mr. Fister artificially suppressed Mr. Bennett's interview score in an effort to discriminate against Mr. Bennett based on his race and prevent him from being selected for the Criminal Investigator position.
- 18. Upon information and belief Mr. Fister influenced the other two interview panel members to score Mr. Bennett lower on his interview, due to Mr. Fister's discriminatory animus toward Mr. Bennett.
- 19. As a result of Mr. Fister's presence on the panel, Mr. Bennett's knowledge, skills, and abilities were demonstrably discounted and mischaracterized in an effort to score him lower than he should have been scored in the interview.
- 20. Due to the lower interview score that Mr. Bennett received due to Mr. Fister's mischaracterization of Mr. Bennett's knowledge, skills, and abilities to perform the Criminal Investigator position, Mr. Bennett was not selected for position.
- 21. The Agency selected two other candidates to fill the Criminal Investigator position who were both white males.
- 22. At the time of events giving rise to Mr. Bennett's claims, Mr. Bennett had demonstrably superior qualification for the Criminal Investigator position as compared to the two selected candidates who are outside of his protected class.

### **STATEMENT OF CLAIM**

# [Employment Discrimination – Race – 42 U.S.C. § 2000e-2(a)(1)]

- 23. The allegations contained in the foregoing paragraphs are hereby incorporated by reference.
- 24. Defendant engaged in unlawful employment practices in Arizona, in violation of Section 703(a)(1) of Title VII, 42 U.S.C. § 2000e-2(a)(1), by selecting candidates outside of his protected class with demonstrably inferior qualifications to fill the Criminal Investigator position.

- 25. Mr. Bennett is a member of a protected class based on his race (African American).
- 26. Mr. Bennett was qualified for and applied for the Criminal Investigator position.
- 27. Mr. Bennett was considered for the position but was not selected for the position.
- 28. Two individuals with demonstrably inferior qualifications were selected for the position.
- 29. The Agency avers that Mr. Bennett was not selected for the position at least in part due to his lower interview score as compared to the selected candidates.
- 30. The Agency's proffered explanation is demonstrably pretextual because Mr. Bennett's interview score was artificially suppressed due to Mr. Fister's discriminatory animus toward Mr. Bennett based on his race, as evidenced by the demonstrably false statements concerning Mr. Bennett's knowledge, skills, and abilities to fulfill the Criminal Investigator position.
- 31. The effect of the practices complained of in the foregoing paragraphs has deprived Mr. Bennett of the equal enjoyment of terms and conditions of his employment and otherwise resulted in substantial emotional distress.
- 32. The unlawful employment practices complained of in the foregoing paragraphs were done with reckless indifference to Mr. Bennett's statutorily protected Civil Rights.

### PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests that this Court:

- A. Order Defendants to make Mr. Bennett whole by providing compensation for past and future pecuniary losses resulting from the unlawful practices described above, in amounts to be determined at trial.
- B. Order Defendants to make the aggrieved individuals whole by providing compensation for past and future non-pecuniary losses, pursuant to Title VII, resulting from the unlawful practices described above, including but not limited to emotional pain, suffering, inconvenience, mental anguish, humiliation, and loss of enjoyment of life, in amounts to be determined at trial.
- C. Grant such further relief as the Court deems necessary and proper in the public interest.

RESPECTFULLY SUBMITTED this 11th day of January 2024.

MOOSBRUGGER LAW, PLLC

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